

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERROL LASHONE HINTON,

Defendant-Appellant.

UNPUBLISHED

March 15, 2005

No. 252544

Wayne Circuit Court

LC No. 03-008533-01

Before: Murray, P.J., and Markey and O’Connell, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to ten months to ten years’ imprisonment for the assault conviction and two years’ imprisonment for the felony-firearm conviction. Defendant appeals, claiming that the sentencing court erred in calculating Offense Variables 3, 12, and 17. We affirm.

Defendant argues that the assessments violate the United States Supreme Court’s opinion in *Blakely v Washington*, __ US __; 124 S Ct 2531; 159 L Ed 2d 403 (2004). However, *Blakely* has no application to Michigan’s indeterminate sentencing scheme. *People v Claypool*, 470 Mich 715, 731; 684 NW2d 278 (2004). The sentencing court did not err in assessing twenty-five points under OV 3 because “[l]ife threatening or permanent incapacitating injury occurred to a victim.” MCL 777.33. The victim was shot in the back four times and was in a coma for over a month. The sentencing court also did not err in assessing one point under OV 12 because there was evidence of a contemporaneous crime committed. Under MCL 777.42(2)(a), the sentencing court could consider criminal acts that occurred within twenty-four hours of the sentencing offense that have not resulted in separate convictions. Here, there was evidence that defendant was carrying a concealed weapon. The sentencing court did err, however, in assessing ten points under OV 17 because the offense did not involve the operation of a vehicle, ORV, snowmobile, aircraft, or locomotive. MCL 777.22(1).

Subtracting the improperly scored ten points does not alter the guidelines range. Defendant’s new score would be fifty-six, resulting in the same scoring cell and guidelines range of ten to twenty-three months.

Affirmed.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Peter D. O'Connell